Blue Valley Telephone Company
Home

Bluestem Telephone Company
Dodge City

Columbus Telephone Company

Council Grove Telephone Company

Craw-Kan Telephone Coop., Inc.
Girard

Cunningham Telephone Company, Inc.
Glen Elder

Golden Belt Telephone Assn., Inc.
Rush Center

Gorham Telephone Company

H&B Communications, Inc.
Holyrood

Haviland Telephone Company, Inc.

Home Telephone Company, Inc.
Galva

JBN Telephone Company, Inc.
Wetmore

KanOkla Telephone Assn., Inc.
Caldwell

LaHarpe Telephone Company, Inc.

Madison Telephone Company, Inc.

MoKan Dial, Inc.
Louisburg

Mutual Telephone Company
Little River

Peoples Mutual Telephone Company
LaCygne

Pioneer Telephone Assn., Inc.
Ulysses

Rainbow Telephone Coop. Assn., Inc.
Everest

Rural Telephone Service Company, Inc.
Lenora

S & A Telephone Company, Inc.
Allen

S & T Telephone Coop. Assn.
Brewster

South Central Telephone Assn., Inc.
Medicine Lodge

Southern Kansas Telephone Co., Inc.
Clearwater

Sunflower Telephone Company, Inc.
Dodge City

Totah Telephone Company, Inc.
Ochelata, OK

Tri-County Telephone Assn., Inc.
Council Grove

Twin Valley Telephone., Inc.
Miltonvale

United Telephone Association, Inc.
Dodge City

Wamego Telephone Company, Inc.

The Wheat State Telephone Co., Inc.
Udall

Wilson Telephone Company, Inc.

KANSAS RURAL INDEPENDENT Telephone Companies

Investment that works for all Kansans

Kansas Corporation Commission Broadband Roundtable – Overarching Issues for Consideration

General Responses by the Kansas Rural Independent Telephone Companies
March 11, 2011

The Kansas rural independent telephone companies provide basic and advanced communications services to their customers in service areas covering half the state. We have committed significant effort and resources in response to the mandates of federal and state telecommunications policy. In our respective service areas we have met the goals of Kansas law and current standards to provide all consumers "access to a first class telecommunications infrastructure that provides excellent services at an affordable price" and "access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas." This record of performance has been achieved in spite of high cost and low population density, in markets that are unlikely ever to support such services solely through consumer rates.

The rural telephone companies have established this record of performance under regulatory constraints that permit recovery of only reasonable costs and only modest opportunities for return on investment. Our communities benefit from this high level of service quality, reliability and affordability only because we have made extensive long-term commitments and incurred significant obligations in reliance on existing law and policy. It remains our objective to meet the evolving needs and expectations of families, institutions and businesses in the areas we serve.

The proposed National Broadband Plan addresses laudable objectives and continuing needs for advanced communications in yet-underserved areas. The plan's specifics, however, would do more harm than good in many areas where present policy has already proven successful. The Kansas rural independent telephone companies welcome and appreciate the Kansas Corporation Commission's foresight in affording service providers, policymakers and interested parties this opportunity to exchange information and recommendations. In support of that objective we offer the following responses to the Commission's Issues for Consideration.

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A. What priorities should be used to guide Kansas comments?

Answer: The Commission's (KCC's) primary focus is the public interest and it is in the public interest for broadband services, no less than traditional voice services, to be available to all Kansans at comparable levels of service and comparable rates. It is likely that citizens in rural Kansas will have even greater need for robust broadband, as more basic services physically available in urban areas become available to rural markets only through broadband.

The Commission's first priority should be to assure that rural Kansas consumers have access to just, reasonable and affordable rates and services, including broadband, comparable to rates and services offered in urban areas. For areas served by rural Rate of Return ILECs (RLECs), typically this will mean that comparable consumer rate levels will not produce sufficient revenue for the deployment and maintenance of a network capable of providing high speed broadband access without predictable, sufficient and stable Federal and State Universal Service Funding (USF).

Consequently, the Commission's next priority should be to assure that sufficient USF funding is available for the RLECs to (a) continue providing high quality service to their rural customers, (b) continue building out broadband capable networks and (c) meet existing and future loan commitments incurred to serve the public interest. The current Federal USF process currently imposes a hidden unfunded mandate (shifting the recovery of network costs back to the state jurisdiction) that puts increased pressure on the Kansas Universal Service Fund (KUSF). The KCC should seek to insure that the Federal Communications Commission (FCC) does not impose further and hidden unfunded mandates on Kansas consumers, as would be the case if the FCC's proposed near term changes for RLECs in the Notice of Proposed Rulemaking (NPRM) were adopted. These changes would either (a) make it very difficult (in some cases impossible) for many RLECs to continue operations, or (b) if the RLECs sought recovery of the costs that these changes shift back to the state jurisdiction from the KUSF, significantly increase demand on the KUSF.

It is important that the KCC avoid the adverse impact on Kansans of an FCC proposal that could require laying off many employees and closing the doors permanently at businesses that are major supporters and suppliers of Kansas infrastructure.

Finally, the KCC should work with the FCC to seek to find effective ways to incent Price Cap or other carriers to deploy any necessary capital for networks capable of providing comparable broadband service in the rural areas served by the larger local carriers.

B. What are the current broadband and mobile voice deployment plans for Kansas?

Answer: The RLECs remain committed to continued deployment of high–capacity facilities and broadband services throughout their respective service areas. Most have completed or are in the process of completing such deployment, with facilities that will permit continuing capacity upgrades on a prudently expeditious and economic basis.

The RLECs' plans for continuing expansion of deployment and capacity, as well as responsible maintenance and operation of current services, will be possible only if reliable, predictable and sufficient support is available.

C. How should broadband be defined (the FCC proposes 4Mbps download speed and 1Mbps upload speed)? Should the funded network be scalable for future needs?

Answer: Although 4/1 might be a reasonable initial target, a fixed numeric standard risks institutionalizing a service level that is likely to become inadequate for developing applications. An objective of speed comparable to the average available urban speed would be more reasonable. Broadband networks should be scalable for future expected demands.

The FCC's 4/1 speed, as envisioned in the National Broadband Plan (NBP), is being used as a choke to deter the deployment of efficient, scalable networks in rural areas. Network deployment costs that would provide speeds in excess of the target and that enable future capacity expansion to serve growing customer demands and needs would not be supported by the Federal USF.

D. What is the minimum broadband speed necessary to support wireless 3G services? 4G services?

Answer: Not Applicable to rural RLECs

E. How do the Legacy funding mechanism, the CAF, and the Mobility Fund work together?

Answer: As mentioned in the answer to (1) above, the current Federal funding mechanisms are, for many RLECs, shifting costs to the state jurisdiction and in Kansas, are putting pressure on the KUSF. The FCC's NPRM proposes near term changes for rural RLECs that would further reduce Federal support and shift responsibility for some additional cost recovery to the states.

In the NPRM, there is no clear vision of how a Connect America Fund (CAF) would work for RLEC service areas. As a consequence, it is unclear how legacy support mechanisms and the CAF would work together, except that the FCC seems to want to reduce both legacy and later CAF support to levels that are insufficient to fulfill the universal service goals of the Act in RLEC service areas, and may, in many cases be insufficient for these RLECs to pay back loans and continue operations.

F. What is the appropriate mechanism for providing access to broadband in unserved areas and determining support levels? Reverse auction? Other?

Answer: If history is any guide, rate of return (RoR) regulation, as opposed to other forms of incentive regulation such as Price Cap regulation, has incented the deployment of efficient networks capable of providing basic and broadband services in areas served by RLECs operating under RoR regulation.

Price Cap regulation has incented the opposite – the incentive with this regulation is to minimize deployment of capital for broadband capable networks in rural areas where the return is the lowest, and instead to deploy capital in urban and suburban areas where the return is much higher. The success of RoR regulation should continue to be made available in RLEC service areas.

Rate of return regulation has the additional benefit of assured performance. Traditionally, support is provided only for investments and expenditures already made and placed in public service. A system of present support payments intended to meet future performance requirements would create the possibility of noncompliance, leading to disputed and protracted complaint proceedings and nonproductive diversion of both regulators' and providers' resources.

Reverse auctions in general are an inappropriate mechanism to incent the efficient and long term build out and maintenance of networks. This is particularly true as applied to service areas in which incumbent rate of return telephone companies have already deployed broadband-capable facilities through use of significant long-term debt commitments. A large wireless carrier with ready access to capital could intentionally and non-economically "underbid" an existing provider solely to eliminate competition. The result could easily be a disabling denial of resources to the incumbent carrier, discontinuance of existing basic and advanced services and loss of existing local economic benefits. A reverse auction by itself is likely to cause discontinuance of existing high-quality, scalable broadband service in favor of eventual replacement by service of lesser quality designed to meet bare minimum standards.

A reverse auction is inherently unreasonable to determine support levels for existing RLECs operating under constraints of defined service areas, insufficient market factors and existing long-term debt. These providers would be denied, by factors beyond their control, any reasonable opportunity to recover even their existing prudent investments made to provide public utility service under current law.

In areas now served by ILECs under incentive regulation, it is unlikely that the incentive based ILECs will agree to move back under RoR regulation because of the added regulation that goes with this form of regulation. As a consequence, if the price cap ILECs serving these areas are unwilling to upgrade their networks, some form of grant-based CAF funding based on reverse auctions may be the only way to bring high speed broadband to these areas. Policy makers should recognize, however, that so-called "market-based" support eligibility mechanisms might require consumer contributions unrelated to the actual cost of providing service, with a resulting likelihood of either insufficient or excessive support paid to providers.

G. What are the short-term and long-term effects of proposed changes on price-cap ILECs (BOC and mid-size), RLECs, CLECs, Wireless providers, and VoIP providers? On the KUSF?

Answer: The changes proposed by the FCC in the NPRM for the RLECs would, quickly in some cases and over time for others, impose severe financial harm. This would make it difficult or impossible to continue paying back loans and to continue operations. New capital deployment would likely cease; in fact, the mere proposal of the NBP has already had an adverse impact on rural companies' access to capital. If the RLECs attempt to recover the costs that would be shifted back to the state jurisdiction by the FCC's proposals, there would be significant pressure to increase the size of the KUSF.

H. What is the risk of stranded investment or implications to Kansas carriers who have incurred substantial debt to build out their systems? Given the likely time frame for an FCC decision on this NPRM, will there be a chilling effect on current capital project planning?

Answer: There likely will be significant stranded investment if the FCC's proposals for RLECs funding changes are adopted. Analysis of the proposals show that it will be difficult or impossible for borrowers to pay back debt obligations.

There has been and will continue to be a chilling effect on capital deployment until rational reform providing sufficient universal service funding for rural America, as opposed to many of the proposals in the NPRM, are adopted.

Where discontinuance of reliable and sufficient support results in default or termination of operations by a rural carrier there is likely to be no market for most existing facilities. It is a given that rural carriers provide service well below cost, and there is little likelihood that any other entity could or would operate such facilities economically in the absence of a self-sustaining market. Extensive facilities already deployed, rather than being a continuing asset to rural economies, would become dead weight.

I. Is there a "rural-rural" divide in Kansas, where there are RLECs that have deployed broadband-capable lines, and other rural areas which have either not received sufficient support or failed to make necessary investment to build-out or upgrade to broadband capability? What information does the Commission need to make this determination? What is the best resource from which the Commission can obtain information on this issue?

Answer: There likely is a rural-rural divide in Kansas. As discussed previously, incentive or price cap regulation generally does not provide incentives to deploy capital in rural areas served by the ILEC under incentive regulation – the returns simply are regarded by the provider as insufficient to incent that deployment. Consequently, there are significant gaps in broadband deployment in these rural areas.

On the other hand, RoR regulation does incent network upgrades and deployment subject to regulatory restraint and has generally resulted in deployment of broadband capable networks in areas served by RLECs.

Once its accuracy is verified, the Commission should be able to use the recently released Broadband Map to evaluate the rural-rural divide.

J. How can the Commission gather all necessary data (about broadband availability, mobile voice service availability, the cost associated with deployment to unserved areas, the effect of intercarrier compensation changes, etc.), without requiring companies to duplicate information that may have already been provided in response to others requests for data?

Answer: The Commission could issue appropriate data requests to the various industry segments. If the Company has already provided data in response to other requests for data, then it should impose little additional effort on the company to also provide that data to the KCC.

K. What is required of Kansas carriers to move to an IP network? Can current switches be updated with software for IP or are new switches needed? Are other network changes needed? What is the time frame & cost of deployment?

Answer: Specific information would need to be provided by individual ILECs, but in general:
1. Many of the existing switches will work with an IP network.
2. RLECs have already changed out circuit switches (or are in the process) to soft (IP based) switches when the existing switches are exhausted and/or worn out and/or are no longer efficient.
3. As a consequence, for RLECs, rather than a wholesale change out, switch replacement is a continuum of prudent network upgrades to accommodate new and more efficient technologies.

L. Regarding the FCC's expressed interest in consolidating service territories to take advantage of scale efficiencies, what is the implication for Kansas service providers? Are there service territories in Kansas that could be the target of FCC consolidation efforts? Can the FCC force consolidation? Should the Commission consider this issue?

Answer: RLECs are serving the areas they serve because no other larger ILEC was willing to serve the customers in these areas. In most cases RLECs are operating as efficiently as possible given their size and their markets, particularly in Kansas where they have undergone audits.

The FCC could incent consolidation by removing roadblocks that currently exist in their rules (the Parent Trap rule) and provide sufficient support to upgrade the networks in acquired areas, but it is difficult to envision how the FCC can legally force ILECs in Kansas to consolidate unless the process includes just compensation for unwilling sellers and unwilling buyers.

M. What impact would mandatory disaggregation have on Kansas carriers?

Answer: Mandatory disaggregation for all RLEC wire centers and study areas in Kansas makes little sense. A good deal of work and expense would be involved for no discernable benefit.

If the FCC decides that, in an area where an unsupported wireline competitor exists, no wireline service provider should receive support, then only in these circumstances, should disaggregation [of costs and support between the area where the competitor exits (hole) and the remainder of the ILECs area (donut)] occur. In this circumstance, support for the RLEC's overall network costs would likely be moved to support the disaggregated donut network costs, and possibly there would be no support provided for the RLEC's network costs in the hole, but only if the RLEC has the same obligations as the competitor in the hole, and if comparable network programming pricing is offered both to the RLEC and the competitor. In other words, competitors in the hole would not be supported but would be on an equal competitive footing, including the removal of the POLR/COLR obligation. Some customers may not be served as they become deemed high risk or low margin customers.

N. What service requirements or public interest obligations are appropriate for providers that receive USF support?

Answer: In addition to existing requirements, the Commission should consider the POLR requirements laid out in the recent State Joint Board COLR/POLR paper.

O. Are the proposed transition time-frames for USF and ICC reform adequate?

Answer: Because the proposals that affect RLECs will in most cases provide insufficient support to pay loans and continue to operate, the question of transition time-frames is likely academic. However, if a plan that reforms USF and ICC, and also provides sufficient support for RLEC areas is considered, a transition longer than two to three years would allow both the RLECs and the customers in their areas to adjust. Generally, transitions that affect customer rates have been in the range of 5 to 8 years.

P. Is arbitrage a problem in Kansas? If so, what is the dollar impact (lost revenues or additional expense) related to arbitrage? What are the causes of arbitrage in Kansas (traffic pumping/access stimulation, phantom traffic, VoIP, etc)?

Answer: Arbitrage is incented because of differing rates for interconnection (interstate access, intrastate access, reciprocal compensation, ISP-bound, VoIP) as well as differing interconnection requirements for wireless carriers (use of the MTA to define local rather than the ILECs certified area when calls are originated by a customer in an ILECs area). In Kansas, the Commission periodically (every two years) mirrors interstate access rates minimizing or eliminating some types of arbitrage. The other rates, or requirements for those rates, that incent arbitrage generally result from FCC Orders or federal statute (e.g., ISP-bound, CMRS, reciprocal compensation, VoIP).

Until the FCC requires all providers that interconnect in a similar manner for similar services (ISP's, ESP's, VoIP, CMRS) to pay the same rate, arbitrage will continue.

Q. What steps has the industry taken to address arbitrage? Are the FCC's proposals appropriate or are there other issues that should be considered? Are other Commission actions warranted?

Answer: To try to determine if carriers that use the ILEC's networks to offer services to their customers are paying the proper compensation, RLECs can purchase or rent equipment that will measure traffic terminated to their network, sorted out by the carrier that originated the calling. The RLEC can then try to determine if the calls are interstate, intrastate or local, and if the originating carrier paid the proper ICC rate. This process is, however, costly and time consuming. If the carrier isn't paying the proper rate, the RLEC then must file with the FCC or State Commission to request enforcement of proper payment. The FCC has not been helpful in the past in assisting in collection of proper payment.

The FCC's proposals to address phantom traffic are appropriate, however, they will only make a difference if enforced. If these rules are finally adopted by the FCC, the states could fulfill an enforcement role when issues arise as a result of the operation of the rules.

One simple and effective solution for phantom traffic would be a universal requirement for accurate and adequate identification of all traffic, coupled with authorization of carriers to block non-complying traffic. The resulting consumer dissatisfaction with non-complying providers would quickly produce universal compliance with call identification requirements.

R. Should Kansas and other "early adopter" states be provided some type of advantage, in access to CAF support or by other means, over other states that have not yet achieved parity with interstate access charges?

Answer: Yes, if the FCC provides for CAF grants in non-RLEC service areas, "early adopter" states should have priority in access to the grants.

S. What are the pros and cons of the FCC's proposal to deem all intercarrier compensation (ICC) as reciprocal compensation?

Answer: The FCC's economic and legal theories justifying this are flawed and wrong. Deeming all traffic as reciprocal compensation ignores a fundamental consideration: ICC is based on the fact that the carrier that serves the customer (and charges that customer for the service) is responsible for paying other carriers for the use of the latter's network to originate and/or transport and /or terminate the call. Reciprocal compensation assumes that the ILEC is the customer's carrier for all calls – this is not true for toll or ISP, etc. calls. ILECs would be significantly harmed because they would lose compensation from carriers that use the ILEC's network to originate calls, and instead of the originating carrier paying to terminate the calls, the ILEC would have to pay.

States would also lose their jurisdiction to assure reasonable charges for intrastate access traffic.

T. What is the effect of transitioning all intercarrier compensation to a bill-and-keep mechanism? Does per-minute compensation make sense in an all-IP network?

Answer – So-called "bill and keep" requires high cost LECs effectively to subsidize other carriers, and increases the demand on contributors to existing support mechanisms. Regulatory policy has traditionally, and correctly, required those who benefit from the use of a local network to contribute to that network's costs.

Bill and keep may also have arbitrage problems – For instance, users of Special Access may drop the special access circuit and start using the "free" switched access circuits, causing further revenue loss for the RLECs and likely additional costs to deal with the increased traffic load.

Ultimately, in an all IP network (whenever that may occur) a mechanism other that a per-minute compensation may make more sense for ICC. For instance, metered (per kbps or per Meg) may make sense. The FCC should as it has requested in the NPRM, evaluate this alternative methodology.

In the meantime, per-minute compensation serves as a reasonable, objective, competitively- and technologically-neutral basis to measure the benefit for which a service provider should compensate other facilities providers. If the FCC would simply require all users of the network to pay for that benefit with similar charges for similar use, and enforce that requirement, ICC could remain for the foreseeable future and the burden on a USF would be diminished.

U. How do interconnected VoIP providers interconnect to the network? Can all VoIP traffic be identified? Why or why not?

Answer: RLECs know VoIP traffic is delivered to them just as is traditional circuit-switched traffic, generally over the facilities of intermediate carriers. Terminating VoIP traffic requires the same LEC resources and provides the same benefit to the originating caller.

All VoIP traffic can certainly be properly identified if there are appropriate consequences for non-identification; see answer to Q, above.

In many cases, VoIP traffic is sent to a carrier with a presence and connection with the RLEC. In most cases it is a National Wireless Carrier. The traffic is then POPped out to their network and then shipped to the RLEC. It doesn't show as an interconnected VoIP call. It shows up as a Wireless call governed by the interconnection agreement.

V. Should VoIP calls be subject to switched access, special access, reciprocal compensation, or a special VoIP rate? What is the revenue impact of VoIP not paying compensation for access to the PSTN network? Should the FCC adopt a bill-and-keep methodology for VoIP?

Should there be a VoIP-specific rate? Do per-minute intercarrier charges make sense in an IP world?

Answer: There is nothing special about VoIP that would cause that service to get a special rate for ICC, or not to pay at all. VoIP service that uses the landline network should pay the applicable technology neutral charges for that use, as do other network users.

The increasing revenue impacts of VoIP nonpayment are (1) escalating demand on support mechanisms and (2) reduced availability of revenue to carriers who would otherwise increase their investment in broadband-capable facilities.

W. What is the success rate for negotiating payment contracts with VoIP providers? What are the implications for existing commercial arrangements that may address compensation for VoIP traffic?

Answer: Kansas RLECs have, as yet, remained focused on securing reasonable compensation from wireless carriers. This has pre-empted efforts to secure agreements with VoIP providers.

X. The FCC has recognized that by having left open the status of VoIP, and its compensation obligations, it has created regulatory uncertainty, conflicts and litigation, which is deterring providers from rolling out advanced services. How has that uncertainty affected IP innovation and investment in Kansas?

Answer: The uncertainty has delayed competitively neutral compensation and support contribution from VoIP carriers, giving VoIP carriers an unfair competitive advantage. The impact on RLECs has been a reduction in reasonable compensation, impeding deployment and maintenance of facilities for advanced services.